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10/554,419	10/24/2005	Axel Huegle	502901-429PUS	5176

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551 FIFTH AVENUE
SUITE 1210
NEW YORK, NY 10176

EXAMINER

SMITH, MATTHEW J

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3635

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/554,419
Filing Date: October 24, 2005
Appellant(s): HUEGLE ET AL.

Alfred W. Froebrich
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 16 June 2010 appealing from the
Office action mailed 14 September 2009

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 16-19 and 21-28 are rejected and are on appeal.

Claims 1-15 have been cancelled.

Claim 20 is objected to.

Claim 29 is allowed.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

4,136,569	Hollweck	1-1979
4,779,305	Gorsek	10-1988

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 16-18, 21, and 24-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Hollweck (4136569).

Hollweck discloses an operating device, comprising: an operating element 10; a front element 1 having an operator-side front side and rear side; a recess, at the top, in the front element 1; the recess having a first cylindrical (col. 2, lines 22-23 - "...hollow, ... thimble-shaped...") guide extending from the rear side of the front element to form a first contact face on the front element; the operating element 10 movable within the recess and the recess surrounded by the first contact face on the front element; the operating element having a flat second contact face which faces the first contact face and is in contact with the first contact face in a non-actuated position (Fig. 1); the second contact face removed from the first contact face upon actuation (Fig. 2); the front element first contact face on the rear side annular and flat; the operating element surrounded circumferentially by the flat second contact face which corresponds to the first contact face and is of annular configuration; the first contact face and the flat

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second contact face have a medium to high surface quality; the operating element flat second contact face stressed against the first contact face by a first elastic element 13 such that a permanently defined surface pressure is set between the first contact face and the flat second contact face; the first contact face and the flat second contact face interact as a seal against spray water and dirt; the operating element movable and guided in the recess in the front element; the operating element including a first guide 12 arranged to extend on the rear side in an actuation direction and interacts with a corresponding second guide; the operating element is a pushbutton; when the operating element is actuated, the first elastic element exerts a restoring force on the operating element counter to the actuation direction; a carrier 18 fastened on the front element rear side; a hold-down 21 which interacts with the carrier with a form-fitting connection such that, in an absence of the front element, a restoring force from the first elastic element on the operating element is absorbed by the carrier by the hold-down; and the hold-down element is fastened to the carrier.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19, 22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hollweck in view of Gorsek (4779305).

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Hollweck discloses the invention substantially as claimed but not the first guide and the second guide include a contour in the circumferential direction arranged such that the operating element cannot be rotated or the operating element secured against rotation in the recess by means of a second contour of the recess and a first contour of the operating element which is assigned to the second contour.

Gorsek presents an operating device having a first guide 34, a second guide 20 and a contour 42, in a circumferential direction, arranged such that the operating element cannot be rotated.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to include a means to stop rotation of the Hollweck operating element, as presented by Gorsek, in order to positively lock the operating element (Gorsek, col. 1, line 48).

(10) Response to Argument

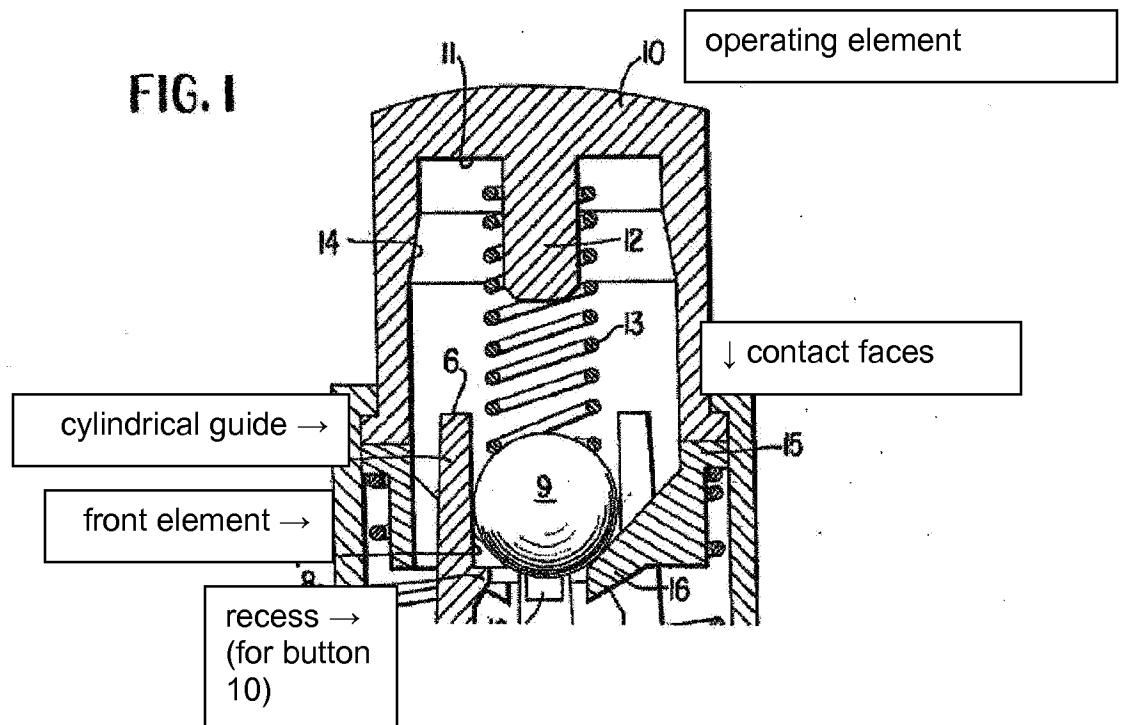
Argument 1.

Appellants argue Hollweck does not disclose a cylindrical guide. As noted in the Final rejection, the examiner contends a "...hollow, ... thimble-shape..." (col. 2, lines 22-23) implies a cylindrical shape since the examiner is unaware of a thimble being a shape other than cylindrical. The examiner notes the guide shape is not a factor for patentability.

The discussion of the first cylindrical guide extending from the rear side of the front element is not convincing. Reviewing Hollweck's Figure 1, the housing 1 recess is

defined by the area for button 10 when button 10 is pushed. At the top of housing 1 is a shoulder portion for the flange on button 10. The portion extending downward from this shoulder is considered the first cylindrical guide extending from the rear side of front element or housing 1. Nowhere in claim 16 is mentioned an aperture with a ring element extending from the aperture edge as illustrated in appellants' Figure 2.

Hollweck's structure has a recess (for button 10), a first cylindrical guide (for the flanged portion of button 10) extending from the rear side of the front element (housing 1) and the shoulders form a first contact face (where button 10 contacts housing 1), the operating element 10 is movable with the recess, and the recess is surrounded by the first contact face, as in appellants' claim 16.



Argument 2.

As noted in the Final rejection, Gorsek is used to teach the concept of structure to prevent rotation of an operating element. The argument does not address the combination to reject this feature, only that Gorsek fails to present a recess. However, the examiner contends Gorsek's body 20 creates a recess for operating element or cap 30. Again, an aperture with a ring element extending from the aperture edge is not claimed, only a guide, for Gorsek tab 72, extending from a front element rear side, which Gorsek also presents in the manner similar to Hollweck.

Claims 17-19 and 21-28 stand or fall with claim 16.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Matthew J. Smith/

Examiner, Art Unit 3635

/Richard E. Chilcot, Jr./

Supervisory Patent Examiner, Art Unit 3635

Conferees:

Richard E. Chilcot

/R. E. C./

Supervisory Patent Examiner, Art Unit 3635

Marc Jimenez /MJ/